

## **BILL ANALYSIS**

Senate Research Center

S.B. 427  
By: Nelson  
Health & Human Services  
7/16/2013  
Enrolled

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

S.B. 427 builds on the legislature's past initiatives to increase protections for children in licensed child-care facilities by closing the final loophole in child care background checks and allowing child-care licensing facilities to focus on high-risk providers.

Currently, child-care operations are required to be inspected annually and most individuals within the system are required to undergo Federal Bureau of Investigation fingerprint background checks. However, general residential operations are required to undergo only name-based checks.

S.B. 427 amends current law relating to the regulation of certain child-care facilities and administrators of those facilities.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the executive commissioner of the Health and Human Services Commission in SECTION 7 (Section 43.004, Human Resources Code) of this bill.

Rulemaking authority previously granted to the executive commissioner of the Health and Human Services Commission is modified in SECTION 2 (Section 42.044, Human Resources Code) and SECTION 3 (Section 42.056, Human Resources Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 42.041(b), Human Resources Code, as follows:

(b) Provides that this section does not apply to:

(1)-(12) Makes no change to these subdivisions;

(13) a juvenile detention facility certified under Section 51.12 (Place and Conditions of Detention), Family Code, a juvenile correctional facility certified under Section 51.125 (Post-Adjudication Correctional Facilities), Family Code, a juvenile facility providing services solely for the Texas Juvenile Justice Department, rather than the Texas Youth Commission, or any other correctional facility for children operated or regulated by another state agency or by a political subdivision of the state;

(14)-(20) Makes no change to these subdivisions;

(21)-(22) Makes nonsubstantive changes; or

(23) a facility operated by a nonprofit organization that:

(A) does not otherwise operate as a child-care facility that is required to be licensed under this section;

(B) provides emergency shelter and care for not more than 15 days to children 13 years of age or older but younger than 18 years of age who are victims of human trafficking alleged under Section 20A.02 (Trafficking of Persons), Penal Code;

(C) is located in a municipality with a population of at least 600,000 that is in a county on an international border; and

(D) meets one of the following criteria:

(i) is licensed by, or operates under an agreement with, a state or federal agency to provide shelter and care to children; or

(ii) meets the eligibility requirements for a contract under Section 51.005(b)(3) (relating to requiring that contracts between the Department of Family and Protective Services (DFPS) and persons operating a family violence center provide certain services to victims of family violence as the family violence center's primary purpose).

SECTION 2. Amends Section 42.044, Human Resources Code, by amending Subsections (b) and (b-2) and adding Subsection (b-3), as follows:

(b) Creates an exception under Subsection (b-3).

(b-2) Requires DFPS, except as otherwise provided by this subsection, during an unannounced annual or biennial inspection of a day-care center, to meet with the director designated by the day-care center as having daily, on-site responsibility for the operation of the day-care center to assess whether the director meets the qualifications of a director specified by this chapter and DFPS rules. Makes a conforming change.

(b-3) Authorizes DFPS, in accordance with rules adopted by the executive commissioner of the Health and Human Services Commission (executive commissioner), to designate a licensed day-care center or group day-care home for a biennial inspection if DFPS determines, based on previous inspections, that the facility has a history of substantial compliance with minimum licensing standards. Requires that the biennial inspection of a day-care center or group day-care home be unannounced.

SECTION 3. Amends Sections 42.056(a-2), (a-4), (a-5), and (b-1), Human Resources Code, as follows:

(a-2) Requires the director, owner, or operator of a residential child-care facility to submit a complete set of fingerprints of each person whose name is required to be submitted by the director, owner, or operator under Subsection (a) (relating to requiring that the names of certain individuals be submitted to DFPS), unless the person is only required to have the person's name submitted based on criteria specified by Subsection (a)(7) (relating to requiring the name of each person 14 years of age or older, other than a client in care, who will regularly or frequently be staying or working at a facility, family home, or prospective adoptive home, while children are being provided care).

(a-4) Requires the director, owner, or operator of a facility, rather than a child-care facility, or family home to submit a complete set of fingerprints of each person whose name is required to be submitted by the director, owner, or operator under Subsection (a) under certain conditions.

(a-5) Provides that the rules adopted by the executive commissioner under Subsections (a-2) and (a-4), rather than (a-2), (a-3) (relating to requiring DFPS to submit a complete set of fingerprints for prospective foster or adoptive parents and any individuals over the age of 18 living the foster or adoptive home), and (a-4):

(1) must require that the fingerprints be submitted in a form and of a quality acceptable to the Department of Public Safety of the State of Texas and the Federal Bureau of Investigation for conducting a criminal history check;

(2) may require that the fingerprints be submitted electronically through an applicant fingerprinting service center; and

(3) may allow DFPS to waive the submission of fingerprints required by this section if certain criteria are met.

(b-1) Requires DFPS, in addition to any other background or criminal history check conducted under Subsection (b) (relating to requiring DFPS to conduct background checks using certain information), for each person whose fingerprints are submitted under Subsection (a-2) or (a-4), rather than (a-2), (a-3), and (a-4), to conduct a state and Federal Bureau of Investigation criminal history check by taking certain action.

SECTION 4. Amends Section 42.078, Human Resources Code, by amending Subsections (a) and (a-1) and adding Subsection (a-2), as follows:

(a) Authorizes DFPS to impose an administrative sanction or an administrative penalty against a facility to family home licensed, registered, or listed under this chapter that violates this chapter or rule or order adopted under this chapter. Authorizes DFPS, in addition, to impose an administrative penalty against a facility or family home or a controlling person of a facility or family home if the facility, family home, or controlling person commits certain acts, rather than against a residential child-care facility or a controlling person of a residential child-care facility if the facility or controlling person commits certain acts.

(a-1) Requires that nonmonetary administrative sanctions, except as provided under Subsection (a-2), including corrective action plans, probation, and evaluation periods, be imposed when appropriate before administrative penalties, rather than requiring that nonmonetary, administrative penalties or remedies, including but not limited to corrective action plans, probation, and evaluation periods, be imposed when appropriate before monetary penalties.

(a-2) Sets forth certain violations for which DFPS is authorized to impose an administrative penalty without first imposing a nonmonetary administrative sanction.

SECTION 5. Amends Section 43.001, Human Resources Code, by adding Subdivisions (5), (6), and (7) to define "controlling person," "general residential operation," and "permit."

SECTION 6. Amends Section 43.003(a), Human Resources Code, to prohibit a person, except as provided by Subsection (b) (relating to hiring an unlicensed child-care administrator under certain conditions) of this section, from serving as a as child-care administrator of a general residential operation, rather than a child-care institution, without a license issued by DFPS under this chapter.

SECTION 7. Amends Section 43.004, Human Resources Code, by amending Subsections (a) and (b) and adding Subsection (d), as follows:

(a) Requires a person, to be eligible for a child-care administrator's license, to:

(1) provide a complete set of the person's fingerprints for DFPS's use in conducting a criminal history and background check under Subsection (c) (relating to requiring DFPS to use certain information when conducting a criminal history and background check of a license applicant);

(2) satisfy the minimum requirements under DFPS rules relating to criminal history and background checks; and

(3)-(5) Creates these subdivisions from existing text and makes no further change.

(b) Requires a person, to be eligible for a child-placing agency administrator's license, to:

(1) provide a complete set of the person's fingerprints for DFPS's use in conducting a criminal history and background check under Subsection (c);

(2) satisfy the minimum requirements under DFPS rules relating to criminal history and background checks; and

(3)-(5) Creates these subdivisions from existing text and makes no further change.

(d) Requires the executive commissioner to adopt rules consistent with Section 42.056 (Required Background and Criminal History Checks; Criminal Penalties) relating to requiring a criminal history and background check before issuing or renewing a license under this chapter.

SECTION 8. Amends Section 43.009(a), Human Resources Code, as follows:

(a) Requires a license holder, to be eligible for license renewal, to:

(1) Creates this subdivision from existing text and makes no further change; and

(2) provide information for DFPS's use in conducting a criminal history and background check under Section 43.004(c) and applicable DFPS rules, including a complete set of the person's fingerprints.

SECTION 9. Amends Section 43.010(a), Human Resources Code, to authorize DFPS to deny, revoke, suspend, or refuse to renew a license, or place on probation or reprimand a license holder for certain conduct, including engaging in conduct that makes the license holder ineligible for a permit under Section 42.072 (License, Listing, or Registration Denial, Suspension, or Revocation), or employment as a controlling person or service in that capacity in a facility or family home under Section 42.062 (Certain Employment and Service Prohibited).

SECTION 10. Repealers: Sections 42.056(a-3) (relating to requiring DFPS to submit a complete set of fingerprints for prospective foster or adoptive parents and any individuals over the age of 18 living the foster or adoptive home) and 43.001(1) (defining "child-care institution"), Human Resources Code.

SECTION 11. Makes application of this Act prospective.

SECTION 12. Effective date: September 1, 2013.